

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 December 2017

Public Authority: Wokingham Borough Council

Address: Shute End
Wokingham
Berkshire
RG40 1WH

Decision (including any steps ordered)

1. The complainant has requested information about land registrations in the borough of Wokingham. Wokingham Borough Council ("the Council") refused to comply with the request under regulation 6(1).
2. The Commissioner's decision is that the Council has correctly applied regulation 6(1)(b). However the Council breached regulation 5(2) by failing to issue a valid response under the EIR within the time for compliance.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 8 February 2017, the complainant wrote to the Council and requested information in the following terms:
 - 1) *Could you please provide details (location, ref & map) of any land registered as Common Land or Town or Village Green within your borough, by email?*
 - 2) *Could you please provide details of any pending applications to make new registrations, or change existing registrations for Common Land/Town or Village Green, by email?*

5. The Council responded on 10 February 2017. It considered the request under the terms of the Freedom of Information Act ("the FOIA"), and refused to comply with it under section 21.
6. On 10 February 2017, the complainant asked the Council to undertake an internal review.
7. The Council subsequently wrote to the complainant on 29 March 2017. It confirmed that the request should have been considered under the terms of the EIR, and issued a new response in which it refused to comply with the request under regulation 6(1). The Council informed the complainant of their right to request an internal review under the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 10 April 2017 to complain about the way the request for information had been handled. The complainant queried the Council's offer to undertake a second internal review, and further, disputed the Council's application of regulation 6(1).
9. The Commissioner recognises that the Council originally responded to the request under the incorrect legislation. Once the Council provided a valid response under the terms of the EIR, it advised the complainant of their right to request an internal review. Notwithstanding this, and to prevent any disadvantage to the complainant, the Commissioner has proceeded to a determination without requiring the Council to first undertake an internal review under the EIR.
10. The Commissioner therefore considers the scope of the case to be the determination of whether the Council has correctly refused to comply with the request under regulation 6(1).

Reasons for decision

Is the information environmental?

11. Information is 'environmental' if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR rather than the FOIA. Under regulation 2(1)(c), any information on measures affecting or likely to affect the state of the elements of the environment listed in regulation 2(1)(a) will be environmental information. The information requested

relates to the status and use of land, which can be understood to affect the state of various elements. The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 5(2) – Time for compliance

12. Regulation 5(2) of the EIR states that:

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

13. In this case the Council breached regulation 5(2) by failing to issue a valid response under the EIR within the time for compliance.

Regulation 6(1) – Form and format of information

14. Regulation 6(1) of the EIR states that:

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or*
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

15. The Commissioner's guidance on regulation 6¹ notes that the use of the phrase "*particular form or format*" means that a requestor may specify not only the physical form, but also how the information is configured or arranged within that form, i.e. the format.

16. The EIR Code of Practice² explains why a preference for a particular format must be considered:

¹ <https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

² https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

A public authority should be flexible, as far as is reasonable, with respect to form and format, taking into account the fact, for example, that some IT users may not be able to read attachments in certain formats, and that some members of the public may prefer paper to electronic copies. (Paragraph 22)

17. However, the duty to make the requested information available in the preferred form or format is not an absolute one. It is qualified by regulations 6(1)(a) and 6(1)(b) in that a public authority does not have to meet the requestor's preference if either it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant.

Context to the request

18. The Commissioner understands that the request seeks information that is available for public inspection, and which can also be requested through the CON29 regime (also known as a 'property search'). This is understood to be the basis of the Council's refusal to comply with the request under regulation 6(1).
19. The Commissioner further understands that the request specifically seeks information (in electronic form) under the terms of the EIR, and that the requestor has not sought to request the information through the CON29 regime.
20. The Commissioner has published specific guidance³ on how requests made under the EIR differ from those made under the CON29 regime. This guidance explains the specific situations in which the terms of the EIR should be applied (including the charging provisions of regulation 8).
21. Regulation 6(1) is composed of two limbs. For clarity, the Commissioner will consider each limb individually.

The Council's position

22. The Council has advised that the requested information is held in hardcopy form as part of the 'Commons Register', which is a statutory

³ https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

register maintained by the Council. The Commons Register holds the details of lands registered, or otherwise pending, under the Commons Act 1985 or the Commons Act 2006.

Regulation 6(1)(a)

23. The Council considers that the requestor is able to access the information (in another format) through the CON29 regime; as part of which the Council will search for and provide the information in a certificated 'LC11' template. The requestor is able to initiate this process by submitting a CON29O template and paying the appropriate fee.
24. The Council therefore considers that it is reasonable for it to make the information available in the format provided by the CON29 regime, and that regulation 6(1)(a) is therefore applicable to the request.

Regulation 6(1)(b)

25. The Council considers that the requestor is able to access the information (in another form) by inspecting the original hardcopy documents. The Council has clarified that the Commons Register is held by the Land Charges Team, and that pending applications are held by the Legal Team. This information can be consolidated and made available for inspection, by appointment, at the Council's offices between the hours of 0900 and 1700 during Monday to Friday.
26. The Council has explained that it uses an appointment system to ensure that the hardcopy documents can be consolidated in time, and that an appropriate officer is available to facilitate the inspection. The Council has confirmed to the Commissioner that in this case the requested information can be made available for inspection in full by using the appointment system.
27. The Council considers that the ability for a member of the public to inspect the hardcopy documents (for no cost) means that the information can be deemed as already publicly available. The Council further considers that, as the applicant is based within a commercial organisation, and because there are two clear routes for them to access the information, it is reasonable to define the information as easily accessible.

The Commissioner's conclusion

Regulation 6(1)(a)

28. The Commissioner's guidance on property searches specifies that in circumstances where a requestor seeks the underlying environmental

information (so that they can answer the questions in a CON29R or CON29O template), the terms of the EIR will apply, and the Council cannot direct the complainant to the CON29 regime.

29. It is not therefore reasonable for the Council to make the information available in the format provided by the CON29 regime.
30. On this basis the Commissioner does not find that regulation 6(1)(a) is engaged.

Regulation 6(1)(b)

31. The Commissioner's guidance on regulation 6 specifies that this limb can be applicable in circumstances where the requested information is both publically available for inspection and easily accessible to the applicant. The guidance explains that there is no specific geographical limit, or distance, beyond which the information is not 'easily accessible'.
32. In the circumstances of this case, the Council has confirmed that the requested information is recorded under a statutory need to do so, and is made available for inspection by the public. The Council has confirmed that requestors are advised to make an appointment for inspection in advance, and the Commissioner has noted this is publically stated on the Council's webpages at:
<http://www.wokingham.gov.uk/planning/advice-for-residents/search-local-land-charges/>
33. The Commissioner is aware that the complainant is an officer or employee of Pali Limited, which is a limited company concerned with the "*supply of conveyancing searches and other property related reports anywhere in England and Wales to property professionals*" (quote taken from Pali Limited's website).
34. The Commissioner is further aware that it is normal practice for property search companies to use agents to attend the offices of local authorities around the country to carry out searches on the company's behalf. This has previously been noted by the Commissioner in Decision notices FER0571475 and FER0572743, which both considered a similar situation to this case. In those two decisions, the Commissioner found that whilst the complainant would need to undertake a substantial round-trip to inspect the information, the particular circumstances of the complainant, as an officer or employee of a limited company and with access to corresponding resources, meant that the information could still be termed as easily accessible.
35. Having noted the above, the Commissioner has concluded that the information is already publicly available and easily accessible to the

applicant in another form or format. He also notes that the Council has explained to the complainant how they can access it.

36. On this basis the Commissioner finds that regulation 6(1)(b) is engaged.

Right of appeal

37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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